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U.S. Intelligence Chief Says He Wasn't Asked to Falsify Reports in Vietnam

By M. A. FARBER

Head of military intelligence in South Vietnam in 1967 testified yesterday that Gen. William C. Westmoreland never asked him to falsify intelligence reports and, if the general had, he would have disobeyed him.

The 68-year old retired officer, Lieut. Gen. Phillip B. Davidson Jr., offered one of the few emotional moments so far in the \$120 million libel suit brought by General Westmoreland against CBS in connection with a 1982 documentary.

The documentary asserted that top American military intelligence officers engaged in a conspiracy to suppress information about a high enemy presence prior to the Tet offensive of January 1968.

Asked About Oath

On his second day of testimony, General Davidson — who was not interviewed for the CBS documentary, although other officers under him were — was asked by Dan M. Burt, General Westmoreland's lawyer, whether he had taken an oath upon his graduation in 1939 from West Point.

"Yes, sir," General Davidson said.

Q. And what was that oath?

A. To honor and obey the orders of my superior officers and to protect and defend the Constitution of the United States.

Q. Does that oath require you to obey an illegal order?

A. No, sir.

Q. Did General Westmoreland ever order you to fake intelligence?

A. No.

Q. If General Westmoreland had ever given you such an order, would you have obeyed it?

General Davidson, his brow furrowed beneath a bald head, leaned toward the microphone over the witness stand — a few feet from General Westmoreland, a rapt jury and a crowded audience of reporters and spectators.

"No," he boomed.

"I have no further questions," said Mr. Burt, his own voice hoarse.

Detailed Cross-Examination

General Davidson was the sixth witness for General Westmoreland, who commanded American forces in Vietnam from 1964-68, in the two-week old trial in Federal Court in Manhattan.

While General Davidson, who was a battalion commander under Gen. George S. Patton in World War II, was forthcoming in his answers to Mr. Burt on direct examination, he seemed unable to recall many of the events that were brought up in detailed cross-examination by David Boies, the lawyer for CBS.

At one stage, Judge Pierre N. Leval advised General Davidson that, if he grew as tired as he had during testimony on Tuesday, he could take a break.

"I'd prefer to have Mr. Boies complete his cross-examination," General Davidson said.

"No promise of that," said the judge, to considerable laughter.

"I understand that all too well, your honor," the general replied.

Thesis of Conspiracy

General Westmoreland contends that CBS and several other defendants libeled him in a 1982 CBS Reports documentary titled "The Uncounted Enemy: A Vietnam Deception."

General Westmoreland specifically accused CBS of saying he had deceived his President Johnson and the Joint Chiefs of Staff, arbitrarily set a ceiling of 300,000 on enemy strength, suppressed reports from his officers of a higher enemy presence and a higher rate of North Vietnamese infiltration than was made known and engineered a cover-up of the truth after the Tet offensive.

The documentary said that General Westmoreland's command had blocked reports from some officers in its "combined intelligence center" that 25,000 North Vietnamese troops were infiltrating into South Vietnam each month in the fall of 1967.

But, under questioning yesterday by Mr. Burt, General Davidson said there was no evidence that infiltration into South Vietnam — as opposed to enemy troop movements outside the country — had reached such proportions before January 1968.

Six Months Time Lag

Moreover, General Davidson said, there was usually a six months time lag before most intelligence officers would know the magnitude of infiltration for a particular month.

General Davidson said he and other ranking officers learned as early as November 1967 that a total of 25,000 North Vietnamese were moving southward toward Khe Sanh, an American base in northern South Vietnam that came under siege before the Tet offensive. But the source of the information, the general said, was highly-secret communications intelligence from the National Security Agency.

General Davidson said that information from the N.S.A. was not normally shared with officers in the "combined intelligence center" because Vietnam-

ese worked there. The Vietnamese, he said, were not subject to the same kinds of security controls and investigations that United States personnel were.

Relying on military reports that were compiled after the Tet offensive, General Davidson told Mr. Burt that the size of the "attacking force" was 84,000, much lower than the figure that CBS is expected to advance later in the trial.

According to the CBS documentary, Americans were caught unprepared for the size of the offensive. And, during his cross-examination yesterday of General Davidson, Mr. Boies attempted to show that if the figure were no more than 84,000, then virtually the entire attacking force must have been put out of action.

In response to a question under cross-examination, General Davidson said that, according to military reports, about 35,000 enemy troops, 5,000 enemy political cadre and 5,000 civilians were killed by United States and South Vietnamese forces in the month of fighting following the offensive. And, as a rule, he said, 1.5 persons would have been wounded for each person killed.

So, said Mr. Boies, "the number of those killed and wounded would significantly exceed the number in the attack, would it not, sir?"

Eighty-four thousand, General Davidson replied, "was the number they started with," not the total force. He said he knew of no studies that calculated the latter figure.

Among the key issues in the trial is a controversial 1967 decision by General Westmoreland to drop a category of enemy personnel — the self-defense and secret self-defense forces — from the official listing of enemy strength known as the order of battle. The CBS documentary indicated that the decision was unwarranted militarily and was prompted by the general's desire to hold the total enemy strength figure below 300,000.

Generals Westmoreland and Davidson have said that the decision was based on their belief that those forces did not pose a military threat. The continued inclusion of those forces in the order of battle, at a probable figure of over 100,000, would have misled the press and the public into believing that enemy strength was mounting rather than receding, the generals have said.

General Davidson, who finished his

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testimony yesterday and will be followed to the stand by Robert Heon, a military intelligence officer under the general, became the intelligence chief in South Vietnam in May 1967. Most of the time that summer, he testified on Tuesday, was taken up with such questions as whether the Chinese were going to send troops to the aid of North Vietnam or supply Hanoi with surface-to-surface missiles that could be fired into South Vietnam from Laos or Cambodia.

He gave comparatively little attention, he added yesterday, to the debate over enemy strength then raging between General Westmoreland's command and the Central Intelligence Agency. The agency, like some military intelligence analysts in Saigon, wanted to increase the estimate of enemy strength to as much as 500,000.

But Mr. Boies pointed to instructions General Davidson had given a subordinate in August 1967 that "this headquarters will not accept a figure in excess of the current strength figure carried by the press" — about 300,000. The same month, in another memorandum to that officer, Col. George Godding, General Davidson wrote that "the figure of combat strength" in the order of battle "must take a steady and significant downward trend as I am convinced this reflects true enemy status."

Under questioning by Mr. Boies, General Davidson could recall virtually nothing about these instructions, about any discussions he had with General Westmoreland over enemy strength figures, or about the circumstances surrounding the decision to delete the self-defense forces from the order of battle.

"Mr. Boies," he said, referring to his instructions to Colonel Godding, "I cannot recall what my views were 17 years ago in this matter."